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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,465	06/26/2003	Charles Lin	33877-CIP1	6420

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HOVEY WILLIAMS LLP
2405 GRAND BLVD., SUITE 400
KANSAS CITY, MO 64108

EXAMINER

SAYALA, CHHAYA D

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/607,465

Applicant(s)

LIN ET AL.

Examiner

C. SAYALA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-2, 4-5, 11-15, 17, 21-22, 26, 29-30 are rejected under 35

U.S.C. 102(b) as being anticipated by GB 955642.

GB '642 teaches a composition for feeding an animal that contains protein, carbohydrate and fat in the amounts claimed (page 3) as well as glutamic acid, the ingredient that has an inherent negative electrostatic charge.

2. Claims 1-2, 4-5, 12-13, 15, 17, 21, 26, 29-30 are rejected under 35

U.S.C. 102(b) as being anticipated by WO 97/13415 or WO 00/00189.

WO '415 discloses a composition for animals that contains the same amounts of fat, carbohydrate and protein as claimed herein. See page 5, which also lists amino acids as claimed herein and that are inherently electrostatically charged. Similarly, WO '189 teaches a similar composition. See page 4 that lists all the ingredients in the same amounts as claimed with the naturally electrostatically charged amino acid.

3. Claim 25 is rejected under 35 U.S.C. 102(b) as being anticipated by WO

00/00189.

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The patent teaches the composition of claim 21 being fed to a cat. See page 1.

4. Claims 1-2, 4-5, 11-15, 17, 21-22, 26, 29-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Ivey et al. (US Patent 5928686).

Ivey et al. teach a feed for animals with the composition given at col. 6, lines 60-67, that also includes amino acids as shown at claim 8. The amino acids shown naturally have an electrostatic charge.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9-10, 20, 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB '642 or WO '415 or WO '189 in view of Marino et al. (US Patent 4418086) or Tonyes et al. (US Patent 4713250) or Spradlin et al. (US Patent 4393085) or Howley et al. (US Patent 4804549) and further in view of Julien (US Patent 5709894).

The GB and WO patents are as described above. They do not teach the proteolytic enzymes or the fungal enzyme. Each of the secondary references teaches just that in an animal feed that comprises fat, protein and carbohydrate. For instance, Marino et al teach a protein (25-45 wt%, col. 5, line 4), fat (5-35%, col. 5, line 23) and the requisite amount of carbohydrate as required by the nutritional requirements as set

forth by the National Research Council of the National Academy of Sciences (col. 5, lines 55-65). The patent also teaches proteolytic fungal enzymes (col. 7, lines 9-22) and shows the amounts at col. 10, lines 40-45. Note that the composition used for pets, is extruded and coated with palatability enhancers, i.e. the fungal enzyme. See col. 10, lines 10-15.

Tonyes et al. disclose a dog food with 20-80% proteinaceous material and 20-80% farinaceous material, which would contain carbohydrate, (see claim 8). The fat content is given as 20% at example 6, and the enzyme protease is in an amount 0.20-.33%. See also col. 10. The mixture is extruded, and coated with a palatability enhancer. See col. 11.

Spradlin et al. disclose a food composition that has protein, fat and carbohydrate. See col. 4, lines 30-35. The fat content is given as being one that is required for a nutritionally balanced dog food. See claim 1. The enzyme fungal amylase and bacterial amylase are in amounts 0.02% each. See example II. The extruded product is coated with palatability enhancers. See col. 13.

Howley et al. disclose a dog food with 20-80% proteinaceous material and 20-80% farinaceous material, which would contain carbohydrate, (see claim 19). The fat content is given as 17.9% at example 2, and the enzyme protease is in an amount 0.03%. See also col. 6, line 1+. The mixture is extruded, and coated with a palatability enhancer. See col. 8, lines 35-41.

The Julien patent teaches that enzymes aid in reducing plant tissue such as protein, carbohydrate, etc. and that they allow for the synchronization of the nitrogen

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source with carbohydrates, thus ensuing the availability of sufficient quantities of energy. Col. 6. It would have been obvious to add the enzymes shown by the secondary references to the composition of the primary references because of the teaching reference of Julien that states the advantage of such an addition, all patents being drawn to animal feed.

6. Claims 3, 6-8, 16-19, 27-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB '642 or WO '415 or WO '189 in view of Marino et al. (US Patent 4418086) or Tonyes et al. (US Patent 4713250) or Spradlin et al. (US Patent 4393085) or Howley et al. (US Patent 4804549) and Julien (US Patent 5709894), as discussed above and further in view of Franzen et al. (US Patent 4282254).

The primary references and the secondary references are as discussed above. What they do not show is the coating of the extruded body by amino acids. Franzen et al. shows a combination of amino acids, both naturally negative and positively charged, being added to animal food, being extruded and then coated with the amino acid as palatant. See example 1 which teaches the various amino acids. See also col. 3, lines 15-47. It would have been obvious to one of ordinary skill in the art at the time the invention was made to extrude the feed to kibbles and as was common, to coat it with a palatability enhancer, here shown by Franzen et al., to be an amino acid.

Double Patenting

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 1-30 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-37 of copending Application No. 10/294374. Although the conflicting claims are not identical, they are not patentably distinct from each other because they have extensive overlap of the same subject matter, and the claims of this invention does not exclude the embodiment claimed in the '374 case, i.e. gelatin.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

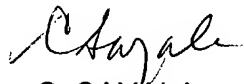
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA whose telephone number is 571-272-1405.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



C. SAYALA
Primary Examiner
Group 1700.